IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.1410 OF 2006.

Santosh Baliram Dalvi,
age about 32 years,
Occupation service,
R/at B-16, Gurudatta Society,
Nardas Nagar, Tembpada Road,
Bhandup (W), Mumbai.

..Petitioner.

Versus.

1. Smt. Bharti Ganpati Jadhav,
age about 28 years,
Occupation service,
R/o Chaurashiya Sadan,
4/39 Shanti Nagar, Wagle Estate,
Thane.

2. Vasant Dada Patil Shikshan
Sansthan Vikas Sadan,
Shree Samarth Nagar,
Bhandup (W), Mumbai.

3. Shrinagar Vidyamandir,
Secondary School, Shrinagar,
Wagle Estate, Thane
Through: Head Master.

4. The Education Officer
(Secondary),
Zilla Parishad, Thane.

5. The Administrator,
Shrinagar Vidya Mandir,
Secondary Section,
Thane. ... ..Respondents.

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Mr. R. A. Thorat Advocate with Mr. Dilip Bodake for the Petitioner.

Mr. N. V. Bandiwadekar, Advocate for the Respondent No.1.

Mr. A. G. Kothare, Advocate for Respondent No.2.

Mr. R. S. Apte, Advocate i/b Mr. N. R. Bubna, Advocate for respondent No.3.

Mr. A. H. Palekar, A.G.P. for Respondent Nos. 4 and 5.

CORAM: R.M.S.KHANDEPARKAR,J.
DATED: 21ST DECEMBER, 2006.

ORAL JUDGMENT.

1. Heard.

2. Rule. By consent, the Rule is made returnable forthwith.

3. The petitioner challenges the judgment and order dated 21st December, 2005 passed by the School Tribunal, Mumbai in Appeal No.13 of 2005. By the impugned order the School Tribunal has set aside the order of termination dated 26th July,2005 which was issued against the respondent No.1 herein and has directed the respondent No. 2 to 5 to continue services of the respondent No.1 on the post of a Clerk with regular salary and other benefits,while confirming the interim order passed on 8th August, 2005. The order

dated 8th August,2005 was to the effect that the execution of the termination order dated 26th July, 2005 was stayed.

4. The challenge to the impugned order is on two grounds. Firstly, that the order dated 25th May, 2005 stated to have been issued against the petitioner, was issued by an Authority not competent to issue such order and, in any case, the petitioner was not aggrieved by the said order as the petitioner was continued in the employment of the respondent-school. Secondly, that the Management of the School was involved in various illegal activities and the petitioner was one of the complainant in that regard and,therefore, the Administrator was appointed and in the said back-ground, the Education Officer was justified in issuing directions to the management to terminate the services of the respondent No.1 who was unauthorizedly sought to be appointed by the School Management.

5. As regards the first ground of challenge, undisputedly, the petitioner had

not raised the point regarding absence of authority to issue the order of termination to the Secretary of the Institution who had issued the order dated 24th May, 2005. As no such point was raised before the School Tribunal,there was no opportunity to the respondents to produce on record the materials disclosing the competency of authority to issue the order, and therefore, the petitioner is not entitled to challenge the impugned order on the said ground. In any case, the said ground is totally irrelevant to decide the issue which arose for consideration before the School Tribunal in the matter in hand.

6. Considering the rival contentions sought to be raised and going through the records, it is apparent that only issue which was raised before the School Tribunal for its consideration was whether the order of termination dated 26th July, 2005 issued against the respondent no.1 was valid or not for having being issued on the basis of direction issued by the Education Officer and in that regard school Tribunal had observed that the said order was issued solely on the

basis of the direction issued by the Education Officer. Indeed, the records nowhere disclose any other material as being the justification for issuance of the order dated 26th July, 2005 attempting to terminate the services of the respondent no.1 herein.

7. Inspite of repeated query, the learned A.G.P., was unable to point out any provision of law either in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 or the Rules framed thereunder or in the Secondary School Code which could justify the order of the Education Officer, in the case in hand, in relation to direction issued to the Management to terminate the services of the respondent no.1. The learned A.G.P. sought to justify the order solely on the ground that there were illegalities committed by the School Management and, therefore, action was taken and even the Administrator was appointed on 14th September, 2005. The powers of the Education Officer to take appropriate action for illegalities committed by the School Management cannot be disputed. However, that

itself cannot empower the Education Officer to issue directions of the nature which were issued in the matter in hand for termination of service of the respondent no.1. In the absence of any statutory provision empowering the Education Officer to issue such direction, no fault can be found with the findings of School Tribunal, wherein it has been observed that the termination order having been issued solely at the instance of the direction given by the Education Officer and in the absence of the Education Officer disclosing statutory provision to issue such direction, the order of termination was liable to be set aside. Indeed, the Tribunal has exercised its jurisdiction in accordance with the law and considering the fact that direction issued for termination of service of the respondent No.1 was beyond the scope of powers of the Education Officer, no fault can be found with the impugned order.

8. The contention on behalf of the petitioner sought to be raised in support of the directions issued by the Education Officer is, therefore, held as devoid of substance.

As no other point is sought to be raised in the matter and on both the points no interference is called for in writ jurisdiction under Article 227 of the Constitution, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

9. The interim reliefs stand vacated.

10. At this stage, the learned Advocate for the petitioner states that till this date the petitioner continued to be in employment. The statusquo directed at the time of issuance of notice may be continued for a period of six weeks. It is to be noted that at the time of admission of the Appeal by the School Tribunal, the Tribunal had stayed the order of termination issued against the respondent no.1 Consequently, as per the records, the services of the respondent no.1 had continued in the said post. At the same time, there is an order of termination of services of the petitioner issued on 24th May, 2005 on record. In these circumstances, in my considered opinion, there is no case made out for grant

of any direction to maintain statusquo at this stage as it can neither be useful to the petitioner nor in the absence of said direction, the petitioner can suffer any loss, much less irreparable loss. The request for continuation of statusquo is therefore, rejected.

[R.M.S.KHANDEPARKAR,J]